

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 509 of 1998

For Approval and Signature:

Hon'ble THE ACT.C.J. MR K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.

2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

JASUBHAI V SONI

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioner
MR JAYANT PATEL for Respondent No. 1
MR JD AJMERA for Respondent No. 2, 3

CORAM : THE ACT.C.J. MR K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 10/07/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, Acting C.J.)

Rule. Mr.Jayant Patel waives service of rule on behalf of the respondents. With the consent of the counsel for the parties, the petition is taken up for

hearing today.

The petitioner claims to be a resident and citizen of India. He visited the United States of America in November, 1991 for business purposes. According to the petitioner, he had taken certain gold ornaments, studded with diamonds, with him, with the idea of selling the same in the United States. He was there for a short period and while returning, he was also given some gifts by his friends and relatives. When he landed at the Ahmedabad Airport on 9.1.1992, he did not declare the gold ornaments. The Customs Authorities searched the petitioner's baggage and the gold ornaments and other goods found in the baggage were seized and they were valued at Rs.7,86,896/-, and the same were confiscated by Annexure 'A' Order.

The petitioner filed an appeal along with a stay application before the CEGAT, Mumbai. Before the CEGAT, the petitioner prayed for release of the goods. The petitioner offered to pay fine in lieu of confiscation. According to the petitioner, this plea was not accepted and aggrieved by the same, the present Special Civil Application is filed.

We heard the petitioner's counsel and Mr.Jayant Patel, who appeared for the respondents. Counsel for the petitioner contended that under Section 125 of the Customs Act, 1962, an Officer, adjudging any confiscation under the Act, may give an option to pay fine in lieu of confiscation in case of goods, importation whereof is prohibited and such Officer shall give an option to pay fine in lieu of confiscation in case of any other goods. According to the petitioner, the gold ornaments are not prohibited items and, therefore, the Tribunal should have given an option to pay fine in lieu of confiscation. The counsel for the respondent points out that the petitioner did not raise such a contention before the Tribunal and, therefore, the petitioner is not entitled to raise this plea before this Court. It is also submitted by the respondents' counsel that the present Special Civil Application is not maintainable as it is against the order passed by the Tribunal and according to the respondents' counsel, the proper remedy for the petitioner is to seek to file an Application, compelling reference by the Tribunal to this Court.

The order passed by the Tribunal does not indicate that it had considered the question as to whether the petitioner was entitled to get release of the goods under Section 125 of the Act. The question whether

the goods in question were prohibited or not was not considered and whether the petitioner had option to pay fine in lieu of confiscation was also not specifically considered by the Tribunal. Having regard to these facts, we are constrained to remit the matter back to the Tribunal to consider this aspect. For the aforesaid purpose, we set aside the order passed by the Tribunal. The Tribunal is directed to consider this aspect afresh and pass appropriate orders within a reasonable time. The parties will appear before the Tribunal on 2nd September, 1998.

Rule is made absolute to the aforesaid extent.

(apj)